

STATEMENT OF EMERGENCY
922 KAR 2:190E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)2 and 3 to ensure implementation and enforcement of 2017 Ky. Acts ch. 135 and the Child Care and Development Fund Block Grant (CCDF) as reauthorized by Public Law 114-183. In addition, the emergency administrative regulation supports more comprehensive background checks of child care staff members, improved access to emergency medications for children in care, and reflects assessment of child care provider standards in accordance with the Red Tape Reduction effort, enhancing provider operations and better protecting the health, safety, and welfare of children in child care settings in accordance with KRS 13A.190(1)(a)1. An ordinary administrative regulation would not allow the agency sufficient time to effect background checks to comply with state and federal mandates, preserve federal award, and better protect children's health, safety, and welfare in child care settings. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
SCOTT W. BRINKMAN, Acting Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Emergency Amendment)

922 KAR 2:190E. Civil penalties.

RELATES TO: KRS Chapter 13B, 194A.030, 199.011(3), 199.894(1), (3), 199.896, 199.990, 42 U.S.C. 9857-9858g

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2)

EFFECTIVE: February 14, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other states and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the secretary to promulgate administrative regulations to establish procedures for enforcement of penalties. This administrative regulation establishes the cabinet procedures for a civil penalty and appeal resulting from a child-care center's violation.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).

(2) "Child-care center" is defined by KRS 199.894(3).

(3) "Licensee" means the owner or[and] operator of a child-care center to include:

- (a) Sole proprietor;
- (b) Corporation;
- (c) Limited liability company;
- (d) Partnership;
- (e) Association; or
- (f) Organization, such as:

1. Board of education;
2. Private school;
3. Faith-based organization;
4. Government agency; or
5. Institution.

(4) "Office of Inspector General" or "OIG" means the organizational unit of the cabinet established in accordance with KRS 194A.030(1)(c) or its designee.

(5) "Statement of deficiency" means a finding of a regulatory noncompliance issued in accordance with 922 KAR 2:090, Section 14[9].

Section 2. Types of Violations. The cabinet shall issue a licensee a:

(1) Type A violation if:

(a) A child-care center violates a standard or a requirement specified in KRS 199.896, KRS 199.990(4), 922 KAR 2:090, ~~[922 KAR 2:110, or]~~ 922 KAR 2:120, or 922 KAR 2:280; and

(b) The violation creates harm, an imminent threat, or an imminent danger to the health, safety, or welfare of a child in the center's care, such as the center:

1. Failing to:

a. Provide for the health, safety, or welfare of a child in care that results in injury to the child, the child's hospitalization, or death of the child;

b. Complete a background~~[criminal records check and a child abuse and neglect]~~ check required in accordance with 922 KAR 2:280[:

~~(i) 922 KAR 2:090, Section 6; or~~

~~(ii) 922 KAR 2:110, Section 5];~~

c. Remove a person with a disqualifying offense~~[substantiation of child abuse or neglect]~~ from contact with a child in care in accordance with 922 KAR 2:280[:

~~(i) 922 KAR 2:090, Section 6; or~~

~~(ii) 922 KAR 2:110, Section 5];~~

d. Comply with a suspension of services; or

e. Administer discipline in accordance with 922 KAR 2:120, Section 2(8), ~~[or]~~ 2(10), or 9(2);

2. Falsifying records;

3. Operating contrary to approved licensed services; or

4. Changing location without prior approval of the cabinet.

(2) Type B violation if:

(a) A child-care center violates a standard or requirement specified in KRS 199.896, KRS 199.990(4), 922 KAR 2:090, ~~[922 KAR 2:110,]~~ or 922 KAR 2:120; and

(b) The violation presents a concern or risk to the health, safety, or welfare of a child in care, but does not create harm, an imminent threat, or an imminent danger to the child, such as the center:

1. Failing to:

a.~~[Complete one (1) of a person's background checks required in accordance with:~~

~~(i) 922 KAR 2:090, Section 6; or~~

~~(ii) 922 KAR 2:110, Section 5;~~

~~b.]~~ Respond to a child's first aid and medical needs in accordance with 922 KAR 2:120, Section 7;

~~b.]~~ Have staff currently certified in cardiopulmonary resuscitation and first aid in accordance with 922 KAR 2:090~~[2:110]~~, Sections 11(3)~~[5(3)]~~ through 11(5)~~[5(5)]~~;

~~c.]~~ Provide adequate supervision in accordance with 922 KAR 2:120, Section 2(3);

~~d.]~~ Make toxic supplies inaccessible to a child in accordance with 922 KAR 2:120, Section 3(7) or 3(8); or

e.[f.] Maintain sufficient records on a child in accordance with 922 KAR 2:090~~[2:110]~~, Section 9~~[3]~~;

2. Releasing a child to a person who is not designated by the child's parent to pick up the child;

3. Leaving a child alone with an underage caregiver; or

4. Exceeding the staff-to-child ratios in 922 KAR 2:120, Section 2 by fifty (50) percent or more.

Section 3. Assessment of a Civil Penalty. (1) The cabinet shall assess a civil penalty in accordance with KRS 199.896(8) and KRS 199.990(4).

(2) A statement of deficiency shall be issued prior to, or concurrent with, the notice described in Section 4 of this administrative regulation.

(3) A statement of deficiency with a Type A violation shall be:

(a) Corrected within five (5) working days in accordance with 922 KAR 2:090, Section 14(3)~~[9(3)]~~ and 14(9)~~[9(8)]~~; and

(b) Subject to a civil penalty of no more than \$1000 for each occurrence of a Type A violation.

(4) A statement of deficiency with a Type B violation shall:

(a) Have a written corrective action plan within fifteen (15)~~[ten (10)]~~ days in accordance with 922 KAR 2:090, Section 14(2)~~[9(2)]~~ and 14(3)~~[9(3)]~~; and

(b) Be subject to a civil penalty of \$250 for each occurrence of a Type B violation.

(5) In accordance with KRS 199.896(8)(b)-(d), a licensee shall receive a monetary credit applied towards a civil penalty in the amount of:

(a) Fifty (50) dollars if a review of the licensee's history finds no Type A or Type B violation cited during the three (3) years prior to the date of the statement of deficiency;

(b) Fifty (50) dollars if the written corrective action plan is:

1. Received by the cabinet within the timeframe specified for the violation type pursuant to subsection (3)(a) or (4)(a) of this section; and

2. Accepted by the cabinet; or

(c) Twenty-five (25) percent of the civil penalty if the licensee waives appeal rights described in Section 5 of this administrative regulation.

(6) Treble penalties shall be assessed pursuant to KRS 199.990(4).

Section 4. Civil Penalty Requirements. Notice that a civil penalty has been levied shall:

(1) Be hand delivered by cabinet staff or delivered by certified mail, return receipt requested, to the:

(a) Licensee; or

(b) Director of the child-care center or the director's designee in accordance with 922 KAR 2:090~~[2:110]~~; and

(2) Specify:

(a) The violation for which a civil penalty has been levied;

(b) The amount of the civil penalty;

(c) That, in accordance with KRS 199.990(4), the civil penalty shall:

1. Not exceed \$1,000 for each occurrence;

2. Be made payable to the Kentucky State Treasurer; and

3. Be mailed to the Office of Inspector General;

(d) That an appeal of a civil penalty shall not act to stay correction of a violation, pursuant to KRS 199.896(7);

(e) That payment of a civil penalty shall be stayed if an appeal is requested; and

(f) That the cabinet may:

1. Deny, suspend, or revoke a license for the same offense for which a civil penalty is imposed; and
2. Take other action in accordance with KRS 199.896(9).

Section 5. Appeal Rights. (1) A licensee shall have appeal rights in accordance with KRS 199.990(4) and 922 KAR 2:090, Section ~~18~~¹⁴.

(2) An appeal shall not limit the authority of the cabinet to:

- (a) Issue an emergency order pursuant to KRS 13B.125(2); or
- (b) Take action pursuant to KRS 199.896(9).

Section 6. Payment of Civil Penalty. (1) The cabinet shall deny an application for child-care center licensure or revoke a child-care center's license if:

(a) Sixty (60) days have lapsed since the latter of either:

1. The notice in accordance with Section 4 of this administrative regulation; or
2. Completion of the administrative appeal process upholding the civil penalty; and

(b) A licensee fails to:

1. Pay the civil penalty levied against the child-care center;
2. Enter into an arrangement to pay a civil penalty that is approved by the cabinet; or
3. Comply with the payment arrangement for the civil penalty.

(2) The cabinet may approve an amendment to a payment arrangement if:

(a) A request for an amendment is received from the licensee; and

(b) The cabinet makes a determination that the payment arrangement creates a hardship for the licensee or the child-care center's operation with consideration given to:

1. The individual circumstances of the licensee or child-care center; and
2. Factors specified in KRS 199.896(8).

(3) The cabinet may terminate collection of a civil penalty if the:

(a) Licensee dies;

(b) Cabinet is unable to locate the licensee; or

(c) Cabinet's continued pursuit of the civil penalty would exceed the:

1. Amount of civil penalty; or
2. Public benefit.

ADRIA JOHNSON, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 12, 2018

FILED WITH LRC: February 14, 2018 at 10 a.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the cabinet procedures for a civil penalty and appeal resulting from a child-care center's violation.

(b) The necessity of this administrative regulation: This administrative regulation is neces-

sary to establish the penalties to be assessed for violations that pose an immediate threat, concern, or risk to a child served by a child-care center and related appeals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of the civil penalty and appeal processes used when a child-care center commits a violation or is subject to an adverse action from the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the cabinet procedures for a civil penalty and appeal resulting from a child-care center's violation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will change the existing administrative regulation by aligning its content with the new child care provider background checks and other concurrent amendments to administrative regulations governing the standards for a licensed child-care center. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary for congruency among the administrative regulation and clarity in the public and among regulated entities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes through its update of cabinet procedures pertaining to civil monetary penalties.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its alignment of civil monetary penalties with concurrent changes to the standards governing licensed child-care centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: From June 1, 2017, to December 18, 2017, the department processed eighty-eight civil monetary penalties impacting the licensed child-care center's quality rating.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new action required on the part of regulated entities. A regulated entity is only impacted by this administrative regulation if the entity has committed a health and safety violation of licensure standards that subjects the entity to a civil monetary penalty.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no change to the civil monetary penalty amounts. There will be no new or enhanced cost for a licensed child-care center subject to a civil monetary penalty due to a health and safety violation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will ensure congruency among the administrative regulations governing licensed child-care providers. In addition, in terms of the public served, the amendment will promote programmatic integrity, health, and safety in licensed child-care centers.

(5) Provide an estimate of how much it will cost the administrative body to implement this

administrative regulation:

(a) Initially: The administrative body will absorb no new initial cost to implement the amendment to this administrative regulation.

(b) On a continuing basis: The administrative body will absorb no new ongoing cost to implement the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly establish any fees; rather, it enforces the civil penalties procedures and enforcement per KRS 199.896 and KRS 199.990. This administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.896(2)

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 9857-9858q

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. The federal law does not expressly address civil penalties or prohibit their application.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, namely the Department for Community Based Services and the Office of Inspector General, will be impacted by this administrative regulation. Local governments and school districts that support a licensed child-care center, in whole or in part, would be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), 42 U.S.C. 9857-9858q

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local gov-

ernment (including cities, counties, fire departments, or school districts) for the first year? There will be no new revenue generated by this administrative regulation for government in its first year. Penalties imposed by this administrative regulation have not been increased or enhanced.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no new revenue generated in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new or additional cost to administer the program in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no new or additional cost to administer the program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: